



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 3, 1996

Ms. Susan O. Bradshaw
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2981

OR96-0862

Dear Ms. Bradshaw:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39944.

The University of Texas (the "university") received a request for information seeking

a list of grade point averages, in any order, indexed by race, for the School of Law class of 1997, after their first year (that is, after the completion of spring semester of 1995, their first complete year).
N.B. - I am only interested in GPA and race, no other information is desired, though if convenient, it may be included.

You assert that the requested information is excepted from required public disclosure pursuant to section 552.103 of the Government Code. You have submitted for our review a representative sample of the requested information.¹

Section 552.103(a) excepts from disclosure information:

¹ In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The university has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The university must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you explain that the university's affirmative action admissions program at the law school is currently the subject of a lawsuit, *Hopwood, et al. v. Texas*. After reviewing the submitted materials, we conclude that litigation is pending. We also conclude that the requested documents are related to the litigation. You may, therefore, withhold the documents pursuant to section 552.103.

In reaching our conclusion here, we assume that the opposing party to the litigation has not seen or had access to the requested information. Generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed.

Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Don Ballard".

Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 39944

Enclosures: Submitted documents

cc: Mr. Robert L.R. Munden
7131 Wood Hollow Drive No. 172
Austin, Texas 78731-2510
(w/o enclosures)